

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

SANDRA F. FLUCK,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 06-188-GMS
	)	
HOENEN & MITCHELL, INC., a	)	JURY TRIAL DEMANDED
Delaware corporation, BELLA	)	
VISTA DEVELOPMENT, LLC a	)	
Virginia corporation, BELLA	)	
VISTA TOWNHOME CONDOMINIUM	)	
ASSOCIATION, INC., a Delaware	)	
Corporation, RE/MAX REALTY	)	
GROUP, a Delaware Franchise,	)	
WILLIAM J. MITCHELL,	)	
individually, and	)	
WAYNE MITCHELL, individually,	)	
	)	
Defendants.	)	

**TRIAL BRIEF OF DEFENDANT WILLIAM J. MITCHELL**

**AKIN & HERRON, P.A.**

/s/ Roger A. Akin  
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Attorneys for Defendant  
William J. Mitchell

**Nature of the Case**

This is personal injury action filed in this case. The Court has diversity jurisdiction. On the date of her injuries, plaintiff Sandra Fluck was touring an open house offered at a townhome development near her property outside Rehoboth Beach.

The pertinent townhome development had been developed by defendant Bella Vista Development LLC, of which defendant Wayne Mitchell was a principal. Defendant William Mitchell was an independent real estate agent and was the agent showing the pertinent property at the time of plaintiff's fall.

Plaintiff alleges that an intermediate step at the front of the townhome between grade and a concrete slab porch was negligently designed, constructed and/or maintained such that it presented a dangerous condition on the date of the accident.

Defendant William Mitchell denies any and all negligence. At all relevant times, defendant William Mitchell had not designed nor constructed the townhome unit, and did not own it or maintain it. He was simply the real estate agent showing the property to those members of the public who wished to see it.

**Contested Facts for Jury Consideration**

The testimony of defense witnesses and an expert to be called jointly by defendants William Mitchell, Wayne Mitchell and Bella Vista Development, LLC will establish that the steps where

plaintiff fell were designed and constructed in accordance with all pertinent building codes and industry practices.

In addition, a representative of the Sussex County Building Department will testify that the steps where plaintiff fell were constructed in accordance with applicable building codes, and that a certificate of occupancy was issued for the premises as a result of that compliance.

Defendant William Mitchell will further establish that plaintiff was injured as a result of her sole or controlling contributory negligence. She failed to exercise due care under the circumstances, thus causing the accident.

#### **Theory of Defense**

Defendant William Mitchell will establish that he is not liable for plaintiff's injuries under her design, construction and maintenance theories in this case because he did not perform any such function with regard to the Bella Vista townhomes.

Defendant William Mitchell will establish that, upon coming to the assistance of plaintiff after her fall, plaintiff admitted that she had failed to pay due care and attention to her physical movements at the time of her fall.

He will further establish that he was under no duty to warn plaintiff of any condition on the date of her accident because the property was safe, and because he had no knowledge, nor reason to know, of any "unreasonable risk" on the premises. He

will establish that the premises were not unsafe nor constructed contrary to any applicable building code provision concerning the installation of exterior steps in such a unit through the testimony of an experienced Sussex County building inspector, and through the testimony of his jointly retained liability expert.

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William J. Mitchell

Dated: September 26, 2007

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SANDRA F. FLUCK,	)	
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Plaintiff,	)	
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v.	)	C.A. No. 06-188-GMS
	)	
BELLA VISTA DEVELOPMENT, LLC,	)	JURY DEMAND OF SIX
a Virginia corporation, BELLA	)	
VISTA TOWNHOME CONDOMINIUM	)	
ASSOCIATION, INC., a Delaware	)	
corporation, REMAX REALTY	)	
GROUP, a Delaware franchise,	)	
WILLIAM J. MITCHELL,	)	
individually, and WAYNE	)	
MITCHELL, individually,	)	
	)	
Defendants.	)	

**NOTICE OF SERVICE**

I hereby certify that on this 26<sup>th</sup> day of September, 2007, a copy of **DEFENDANT WILLIAM J. MITCHELL'S TRIAL BRIEF** was electronically filed with the Clerk of the Court using CM/ECF which will send notifications of such filing(s) to attorneys listed below:

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